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Phillis Johnson-Ball

Surface Transportation Board

1925 K Street NW

Washington, DC 20423

**Re: Finance Docket No. 34797**

RE: New England Transrail, LLC d/b/a/ Wilmington & Woburn Terminal Railway Construction. Acquisition and Operation Exemption In Wilmington and Woburn MA

Dear Ms Ball:

Thank you for the opportunity to respond to the above referenced filing. Although I hold an elected position as a Selectman in Wilmington, I write this letter as an informed and concerned citizen, and not in my official capacity. I will leave the more technical arguments to our legal and environmental consultants.

I wish to comment on three crucial issues raised in the NET petition for exemption: Deliberately incomplete and segmented information; Jurisdictional issues which have been continually raised in the past filing and current filing; Serious hazardous and un-characterized current environmental conditions and inevitable future impacts/ "NIMBY"ism".

#### **Deliberately Incomplete and Segmented Information**

It is well documented that NET's past filings were incomplete and had changed from the original filing. This was not accidental. NET's deliberate attempt to hide the solid waste handling component of this operation undermines their credibility. This current filing also appears to be masking the intended operation, and leaving one to wonder what is behind door number two.

I draw your attention to the most recent site plan submitted in the filing by NET. NET claims trains will enter via the north and exit via the south. If this is true then why is there a runaround track dead ended at the southern most region of the site? It is my understanding a runaround track is:

*"A pair of switches arranged on parallel tracks in yard ladder that lets the engine get by the train it just pulled in."*

Why is this runaround positioned in the opposite direction NET claims the trains will be traveling?

Why is there a runaround in the middle of the undeveloped portion of the site?

Why does the track just dead end?

Why is the connection to the MBTA line not shown on the site plan?

Will there really ever be a connection to the MBTA line?

How can a full environmental review be done without knowing the scope of the whole project? In addition, the proposed rail line at the southern portion goes through

jurisdictional wetlands.

There is also mention in the filing that this operation will service New England Resins. New England Resins directly abuts the southern portion of the Olin site in Woburn and is located along the MBTA rail line. It is also my understanding there is an abandoned rail spur on that property. I recently visited this area and New England Resins appears to be abandoned. So what is the real deal here? And why isn't it being disclosed in this filing? I ask the STB to require NET to fully disclose all connections to existing and abandoned rail lines whether they are or are not on the Olin site, as required under the STB regulations. I also ask that if New England Resins is going to be part of the operations that this also be fully disclosed.

In addition I ask that the STB require an in-depth analysis of the impacts the rail lines will have on the migration of contaminants via the path of the rail infrastructure. It is a well established fact that rail lines aid in the migration of surface water contaminants. Flocculated Chromium, accumulating at the surface from the billions of gallons of chromium that had been discharged to the unlined lagoons is of major concern.

### **Jurisdictional Issues**

There are several jurisdictional issues with in the NET's petition for exemption. They are as follows:

Does the STB have jurisdiction over the siting and operations of solid waste transfer facilities?

Is this operation really subject to exemption?

Is NET really a rail carrier as defined under the STB's regulatory requirements?

Is this really a rail operation, with public access?

Does this contribute to the railroad infrastructure?

Will NET really ever connect with the MBTA line?

Or is NET's proposal simply a smoke screen to what they actually are, which is a private freight yard operating private spurs designed to sort and bale various types of solid waste, without regulatory oversight, giving them an unfair market advantage?

Because most of the above questions have been raised in comments by several parties, these issues must be addressed first and foremost by the STB. These concerns are not only shared by those in Wilmington, and by our neighbors in Woburn, who will also be effected by these operations, but for our country as a whole. This case is being watched by a wide spectrum of the political and private sector. This requested exemption has evolved into a precedent setting case and could well set back environmental protection laws designed to safe guard public health and the environment. State, local, and federal environmental protection laws have been legislatively enacted to regulate the handling of waste from cradle to grave for good reason. RCRA clearly states that waste can not be removed from one segment of the population to, in turn, burden another segment of the population. An un-regulated solid waste transfer station would do just that, unfairly burden the segment of the population in which it is sited. This has already occurred in exempted facilities in New Jersey and New York.

The National Solid Waste Management Association, the Solid Waste Association of North America, and its Massachusetts Chapter, the Integrated Waste Service Association, The Construction Materials Recycling Association, the New Bedford Waste Services, LLC, and the Massachusetts Municipal

Association, (the "Coalition Parties") have filed a petition for Expedited Consideration. I urge the STB to consider this petition. If the STB does not deliberate on this issue as requested, then I respectfully request that the SEA conduct the most rigorous environmental review allowed within their jurisdiction.

## **Environmental Issues**

I understand the benefit STB-granted exemptions bestows to actual rail carrier services. I understand and know how essential it is for fair and adequate railroad construction and operations. Unfortunately, accusations of "NIMBYism" have been raised against some of the opponents of NET's exemption status and the proposed project. It has been claimed that the "NIMBY" response to this filing reflects the clear purpose and legislative intent of exemption status. This accusation is nothing more than smoke and mirrors and couldn't be further from the truth. Opposition to this filing isn't about railroads or rail service. This is about NET using the STB as a catalyst to usurp state legislative authority by overstepping legislative intent given to the STB to further rail service. It is no wonder Mr. Klempner is attempting to sidestep the regulatory process, considering his history of failed attempts for similar operations in New York and New Jersey. Considering how NET has handled the filings regarding this project, one must conclude it is not the regulatory process that is Mr. Klempner's enemy, but he himself. It is fairly obvious that NET feels they have a much better chance at the federal level, where they have more "connections" in higher places than at the State level. This ill-conceived attempt to sidestep state jurisdiction will improperly site a solid waste processing plant, which no one has clear authority over, on a severely contaminated, un-characterized, hazardous waste site. A hazardous waste site that has not achieved a state no significant health risk, has recently been inducted into the EPA Superfund program, and is responsible for impacting many privately-owned properties and has indefinitely shut down the Town of Wilmington's water supply wells in the Maple Meadow Brook Aquifer. Mr. Klempner appears to prefer attempting to set up shop in historically environmentally degraded and impacted areas like the Olin site and then accusing the impacted population of being NIMBY's.

Both Wilmington and Woburn are far from NIMBY's. And anyone who lives in this area knows well how much Wilmington and Woburn have sacrificed for public benefit which has resulted in more than a half century of environmental abuse. We not only have sacrificed more than our fair share to serve the public benefit in the past, we continue to do so in the present.

For instance, Wilmington, before the economic down turn, employed slightly more people with its borders than the residential population. Not bad for a town of 22,000. In addition, we have approximately 7 miles of rail lines comprising three separate service lines, the Lowell line, the Haverhill line and the Wildcat line (Boston Maine) along with 2 public train stations. Quite impressive for a small community approximately 3 miles across and 4 miles wide. Wilmington, which along with Woburn, is a predominately blue collar town, also bears the brunt of traffic burdens due to our proximity to major highways. We have "F" rated intersections at virtually every main road juncture. This will only be compounded by the additional truck traffic associated with this proposal. Please note no real truck route has been established yet for this project. According to SCORE CARD we have some of the worst air quality in the country, attributed to industrial, automotive, and incinerator emissions. We harbor more than our fair share. How ironic our lack of affluence, our contributions to industrial land uses and the benefits these uses give to the public at large, coupled with yesteryears environmental abuses, has left us vulnerable and an easier mark for NET and their so called greater good. For NET to hire one of the most powerful, highest paid, affluent, politically connected law firms in the country, possibly the world, to aid them in the attempt to designate us NIMBY's is almost laughable if it wasn't so detestable.

Both Wilmington and Woburn, according to the Department of Public Health website, not only have higher than expected adult cancer rates, we are also the subjects of cancer studies of our children within the census tracts served by public water supplies from this industrialized area. Woburn's "Civil Action" and childhood cancer study is well known. A link was established between the superfund sites in this area

and the now inactive Woburn water supply. Wilmington's childhood cancer study is on-going and has been since 1999. Although no conclusions have been made yet, what we do know, is we have lost the production of our water supply from the unrestrained, un-characterized contamination emanating from the Olin site. There are 5 landfills within a mile radius of the Olin site: three consolidated landfills from the Industrial Plex superfund sites, the Olin landfill, the Woburn Landfill, and the Maple Meadow landfill. This area is already saturated with contamination well beyond what it can absorb with the addition of the multiple Tier Classified hazardous waste sites.

If ever there was an inappropriate site for a solid waste processing facility, the Olin site is surely it. The current situation has been caused by unlawfulness and the lack of regulation, certainly not NYMBY'ism. Once again, it is not about a railroad, it is about the environmental inequities that have occurred in my community, proposed to be compounded by another un-regulated solid waste activity under the guise of a rail carrier operation. These inequities should not occur in anyone's backyard. No un-regulated solid waste activity should be sanctioned by any government on any of its people regardless of race, color or economic status.

If someone could honestly demonstrate how such a mandate to exempt the operation of unregulated trash and solid waste transfer station, on an un-characterized superfund site, a stones throw of residential districts, within a water supply recharge area, serves the public benefit, then I will concede my position. This proposal serves no greater public good. The proponents motive is profit, while claiming public benefits. Whatever public benefits that will be realized by this operation will be overshadowed by the precedent it stakes out for deregulating the siting of solid waste processing facilities by a federal government entity without the regulatory jurisdiction to enforce compliance with environmental regulations. In Wilmington's and Woburn's case it will allow the continued environmental abuse of an area that has already suffered from decades of un-regulated and un-restrained chemical and solid waste disposal. To continue this trend would not only undermine efforts of discovery and remediation, it would also weaken the legislative intent for states to site solid waste activities in appropriate locations. This is clearly a step backwards, not only for us, but for the nation. The coalition to stop this abuse of the exemption purpose is growing as more people all over the country are better understanding that it isn't about railroads, it's about the deregulation of a state's authority to protect public health and the environment for private profit. No matter how NET's high powered lawyers slice, dice or bale it, the real intent here is not to service the rail industry, but to de-regulate state and local solid waste handling regulations for a chosen few. This was not the regulatory intent of the exemption status and leaves our nation's people at risk.

Sincerely,



Suzanne M. Sullivan. net comments.doc